

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 32, "Receipts Exempt From Use Tax," and Chapter 33, "Receipts Subject to Use Tax Depending on Method of Transaction," Iowa Administrative Code.

These amendments are proposed as the result of 2008 Iowa Acts, House File 2700.

The proposed amendments to rules 701—32.3(423), 701—33.9(423) and 701—33.10(423) reflect the change in the exemption amount from 40 percent to 80 percent pursuant to 2008 Iowa Acts, House File 2700, section 64.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 8, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 25, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 26, 2008.

These amendments are intended to implement Iowa Code section 423.6(14) as amended by 2008 Iowa Acts, House File 2700, section 64.

The following amendments are proposed.

ITEM 1. Amend rule 701—32.3(423) as follows:

701—32.3(423) Mobile homes and manufactured housing. A use tax is not to be imposed on any mobile home or manufactured housing if the tax has been previously imposed pursuant to Iowa Code section 423.2 and paid. In order for the exemption to be allowed, the purchaser of the mobile home or manufactured housing has the responsibility to provide the county treasurer with documentation verifying that the Iowa use tax was previously paid. ~~At~~ On or after July 1, 2008, all taxable mobile homes or manufactured housing is subject to a use tax in an amount equal to ~~60~~ 20 percent of the mobile home's or manufactured housing's purchase price (~~40~~ 80 percent of the home's or housing's

purchase price is exempt from use tax). Prior to July 1, 2008, all taxable mobile homes or manufactured housing was subject to a use tax in an amount equal to 60 percent of the mobile home's or manufactured housing's purchase price (40 percent of the home's or housing's purchase price is exempt from use tax). ~~In arriving at the purchase price upon which the use tax is to be computed, the~~ The trade-in allowance provided in Iowa Code section 423.1(6) "b" is considered a reduction in the purchase price if (1) the property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and (2) the retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: ~~A~~ In January of 2008, a manufactured housing dealer receives from the factory a new manufactured home that has a sales price of \$20,000. The dealer sells it and takes the purchaser's old manufactured home worth \$5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

Sales price	\$20,000
Less trade-in.	<u>\$ 5,000</u>
Buyer's price	\$15,000
Amount subject to tax	\$12,000
(\$20,000 × 60%)	
Use tax at 5%	\$ 600

The trade-in allowance does not apply since the traded-in manufactured home will not be ultimately sold at retail or used to manufacture a like item.

EXAMPLE 2: Same date and facts as given in Example 1 with the exception that the dealer lists the trade-in for sale.

Sales price	\$20,000
Less trade-in.	<u>\$ 5,000</u>
Buyer's price	\$15,000
Amount subject to tax	\$ 9,000
(\$15,000 × 60%)	
Use tax at 5%	\$ 450

The trade-in allowance applies since the traded-in manufactured home will be ultimately sold at retail.

EXAMPLE 3: In September of 2008, a manufactured housing dealer receives from the factory a new manufactured home that has a sales price of \$40,000. The dealer sells it and takes the purchaser's old manufactured home worth \$10,000 in trade. The dealer intends to resell the used manufactured home. The Iowa use tax is computed as follows:

<u>Sales price.</u>	<u>\$ 40,000</u>
<u>Less trade-in</u>	<u>\$ 10,000</u>
<u>Buyer's price</u>	<u>\$ 30,000</u>
<u>Amount subject to tax.</u>	<u>\$ 6,000</u>
<u>(\$30,000 × 20%)</u>	
<u>Use tax at 5%.</u>	<u>\$ 300</u>

The trade-in allowance does apply since the traded-in manufactured home will be ultimately sold at retail or used to manufacture a like item. Because the transaction occurs after July 1, 2008, only 20 percent of the purchase price is subject to the 5 percent use tax.

This rule is intended to implement Iowa Code ~~sections 423.4(11) and 423.4(12)~~ section 423.6 as amended by ~~1999 Iowa Acts, chapter 188~~ 2008 Iowa Acts, House File 2700, section 64.

ITEM 2. Amend rule 701—33.9(423) as follows:

701—33.9(423) Sales of mobile homes, manufactured housing, and related property and services.

33.9(1) *Sales of mobile homes, manufactured housing, and related property and services for one package price.* ~~The following~~ This rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by 701—Chapter 19 which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—33.10(423).

When a customer purchases a mobile home or manufactured housing from a dealer, it is usually the customer's wish that the dealer prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing "ready to move into" a dealer will sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

1. Connect the electricity.
2. Connect the water.
3. Connect sewer system lines.
4. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
5. Build and install steps for a door.
6. Build a deck.
7. Do minor repair.
8. Install and sell a foundation upon which to place the mobile home or manufactured housing.
9. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a "ready-to-move-into" basis usually sells that home or housing and the services and additional property necessary to render them livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses which are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the “purchase price” of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 40 percent prior to July 1, 2008, or by 80 percent on or after July 1, 2008, as explained in rule 701—32.3(423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

33.9(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 33.9(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the “purchase price” of a home or house, that price will not be reduced by 40 percent prior to July 1, 2008, or by 80 percent on or after July 1, 2008, as required under rule 701—32.3(423), in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the gross receipts from the following services sold are subject to Iowa sales tax under Iowa Code subsection 422.43(11):

- a. Electrical hookup and air conditioning installation (electrical installation).
- b. Water and sewer system hookup (plumbing).
- c. Skirting installation and building and installation of steps and decks (carpentry).
- d. Nearly all “minor repairs” would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the gross receipts of which are subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves “new construction” and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab.

33.9(3) No change.

This rule is intended to implement Iowa Code section 423.6 as amended by 2008 Iowa Acts, House File 2700, section 64.

ITEM 3. Amend paragraph **33.10(2)“c”** as follows:

c. ~~Only~~ Prior to July 1, 2008, only 60 percent of the purchase price of either a mobile home or manufactured housing is subject to use tax. On or after July 1, 2008, only 20 percent of the purchase price of either a mobile home or manufactured housing is subject to use tax. See rule 701—32.3(423). The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

ITEM 4. Amend paragraph **33.10(3)“a”** as follows:

a. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the “installed purchase price” of the manufactured housing. The “installed purchase price” is the amount charged by a building contractor to a homebuyer to convert manufactured housing from tangible personal property into real estate. ~~Use~~ Prior to July 1, 2008, use tax is due on 60 percent of the amount of the installed purchase price. On or after July 1, 2008, use tax is due on 20 percent of the amount of the installed purchase price. See rule 701—32.3(423).

ITEM 5. Amend rule **701—33.10(423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 423.1, 423.2, 423.4, 423.6, and 423.7 section 423.6 as amended by 1999 2008 Iowa Acts, chapter 188 House File 2700, section 64.